

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 IN RE: INTEL CORP. CPU) Case No. 3:18-md-02828-SI
4 MARKETING, SALES PRACTICES,)
5 AND PRODUCTS LIABILITY)
6 LITIGATION) June 15, 2018

7 This Document Relates to All)
8 Actions.) Portland, OR

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14 **Case Management Conference**

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE MICHAEL H. SIMON

17 UNITED STATES DISTRICT COURT JUDGE
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(P R O C E E D I N G S)

(June 15, 2018)

THE COURT: Good morning.

THE CLERK: Please be seated.

THE COURT: We are here in the case of In re: Intel Corporation CPU Marketing, Sales Practices, and Products Liability Litigation, Case No. 3:18-md-2828, and this is the first organizing meeting of this multi-district litigation. I think there were 42 cases transferred to me, and then one of them was dismissed, so now I think we have 41 cases.

We'll get appearances from the plaintiffs' counsel as they speak later, but now may I please ask for counsel for Intel to introduce themselves.

MR. KATZ: Your Honor, Dan Katz from Williams & Connolly.

MR. KURTZER: David Kurtzer, also from Williams & Connolly.

MR. LOVETT: Steve Lovett from Stoel Rives.

MS. LEE: Rachel Lee, Stoel Rives.

THE COURT: Okay. And welcome to plaintiffs' counsel here.

I have a few preliminary comments about how I'd like to proceed. Let me begin by saying that I have read all of the motions and all of the case statements, which I found very helpful, and I appreciate that, and I'm inclined to make

1 individual appointments to a plaintiffs' steering committee
2 rather than simply accept a proposed slate of attorneys.

3 I'll share with you some of the factors -- it's a
4 non-exhaustive list. What I generally look for in appointing
5 leadership: Number one, demonstrated experience in handling
6 complex civil litigation, including MDL and class actions.

7 Two -- I probably should have made this number one,
8 because in my mind, it's a priority -- demonstrated experience
9 in working cooperatively, reasonably, and fairly with
10 co-counsel on the same side and opposing counsel, all to
11 achieve the objectives of Rule 1 of the Federal Rules of Civil
12 Procedure.

13 Number three: Knowledge of applicable law.

14 Number four: Knowledge of applicable technology, and
15 the ability to explain complex matters simply yet accurately.
16 I have seen people explain complex technology accurately but
17 not at all simply, and it's hard for me and a jury to follow,
18 and I've seen other people explain things simply, in a way
19 that's easy to follow yet glosses over important nuances. So I
20 look for the ability to explain complex matters simply yet
21 accurately.

22 Number five: The ability and willingness to commit
23 resources necessary to accurately represent the plaintiffs in a
24 large, potentially very expensive matter. And here I am
25 looking, among other things, to how is a leadership member

1 assured that this issue is not in the back of my head or the
2 front of my head.

3 THE COURT: Although if you are selected to be in
4 leadership, it sounds like you may be facing a motion to
5 disqualify, and I'm certainly not going to entertain that now.
6 If and when it arises, we'll deal with it in good course.

7 MR. DAVIDSON: And I just don't think that we're
8 there. I don't think that issue would ever be need to be
9 briefed.

10 Your Honor, the rules of professional conduct --

11 THE COURT: I don't want to get into that now. All
12 I'm saying is if a motion is filed, we'll have a response,
13 we'll give a fair hearing and we'll figure it out.

14 MR. DAVIDSON: And that's what I would appreciate the
15 opportunity to do, because quite frankly we were faced with, at
16 the eleventh hour, we were faced with a motion that took us by
17 complete surprise. We viewed the law as permitting this
18 situation.

19 THE COURT: Let's use your time now as to why you
20 should have leadership or even co-lead.

21 MR. DAVIDSON: Your Honor, we are seeking a co-lead
22 position in this case for many reasons. The reason why I think
23 what I bring to the table would be important for this case is
24 because one of my true strengths -- and sometimes it can hurt
25 my partners sometimes -- is I'm very efficient, I'm very

1 organized, and what I commit to the Court to do, consistent
2 with Rule 1, is to ensure that this case moves forward in a
3 just, efficient, and speedy way.

4 What I would like to focus on --

5 THE COURT: You left out inexpensive, but we've got
6 no chance of that happening here.

7 MR. DAVIDSON: That may be true, Your Honor, but
8 under our case management plan, we don't think this case needs
9 to go to 2021, as defense counsel did.

10 And what I have learned and one of -- I guess one of
11 my strengths that I bring to this case is that I am in the
12 leadership in many technology cases right now, most importantly
13 being the *AMD* case with Ms. Joost from Kessler Topaz, and we
14 just filed our consolidated complaint.

15 THE COURT: I've seen it.

16 MR. DAVIDSON: I was going to hand a copy to Your
17 Honor.

18 And as Your Honor probably saw, we spent the last
19 three weeks working with one of the most preeminent computer
20 science and engineering experts to understand to the best of
21 this legal mind's capability what at least the Spectre defect
22 was all about, and that will enure to the benefit of not just
23 this case but the class, whose interests are paramount, without
24 question, because the learning curve is less, because Ms. Joost
25 and I have spent the last three weeks immersed in what the

1 Spectre defect is, which is half of what this case is.

2 And I do believe that --

3 THE COURT: Spectre is primarily a software issue and
4 Meltdown is primarily a hardware issue.

5 MR. DAVIDSON: Operating system issue.

6 THE COURT: And that's why it's primarily an Intel
7 issue and why it's not in *AMD*, right?

8 MR. DAVIDSON: It is. And the Spectre defect causes
9 a problem where some of the older legacy processors cannot be
10 patched, so they have that added issue.

11 Your Honor did ask us to address about the Lazy FP
12 Restore issue that just got announced. Suffice it to say, I
13 have not done a deep dive into that. I do believe it is
14 similar, in the sense that it deals with side-channel attacks
15 and the vulnerability that allows it to leak data. But whether
16 the patches that they're going to put out will degrade
17 processor speed, I don't know at this point.

18 But I do think that our experience in the *AMD* case
19 should for efficiency and the lack of learning curve really put
20 us at kind of that top level. We can, in fact, litigate this
21 case with efficiency, and that will cut down in cost. It will
22 cut down in expert cost. If we use the same expert that we
23 used in *AMD*, I mean, the learning curve that he would have has
24 been dissipated.

25 And so I do firmly believe that my experience in the

1 *AMD* case in the leadership should make this an easy issue, but
2 I have the experience even without that, Your Honor. We are --
3 I'm in the leadership in the *Yahoo Data Breach* case.
4 Mr. Canty -- I don't know where Mr. Canty is, but Mr. Canty's
5 firm and my firm were literally three weeks away from trial in
6 *Facebook*, in the *Facebook Biometric Information Litigation* in
7 front of Judge Donato in San Francisco when the Ninth Circuit
8 took a 23(f) appeal and shut that down. But we had spent weeks
9 preparing for trial, and we spent the last couple years
10 immersed in the source code. So we have this deep knowledge
11 about the technology that we can bring to this case.

12 But I really want to bring it back to why I think it
13 would be to the benefit of the class and to this Court to add
14 me to the leadership, and more importantly to the co-lead
15 structure. My firm is the -- my partner Mark -- and I'm not
16 sure he is enjoying this or not, but he is now the chairman of
17 the executive committee for the Apple processor case, and one
18 of the things that my office is doing -- I don't know if Your
19 Honor knows much about Robbins Geller other than what you've
20 recently read, but we are the largest plaintiffs' side class
21 action firm in the world. As a result, we've never used
22 third-party funding, and unlike my wonderful friends and
23 colleagues here, we don't even access our credit line to fund
24 our cases. So --

25 THE COURT: That's bragging.

1 MR. DAVIDSON: It is, and I hate doing that, but
2 because the issue came up and because my friends talked about
3 access to credit, I say I don't need access to credit because
4 we really do that well.

5 But what the size of my firm brings to a case like
6 this is -- particularly for a co-lead spot, is that we are now
7 in the Apple processor case collecting, reviewing for
8 duplication, and processing the time and expense records for 39
9 law firms. For reasons I don't necessarily know, Judge Davila
10 appointed 31 firms as the leadership --

11 THE COURT: That's not going to happen here.

12 MR. DAVIDSON: I would hope not, because maybe I'd
13 rather not be in that group.

14 THE COURT: I do have a lot of respect for Judge
15 Davila.

16 MR. DAVIDSON: As do we, and he's a tremendous
17 jurist.

18 But we are doing that. We have the infrastructure in
19 place to review for duplication, to input and to -- more
20 importantly, as Your Honor has ordered, to submit to Your Honor
21 timely and appropriate time and expense records.

22 And what I do commit to Your Honor is that if we are
23 successful at the end of this case, whether by trial or by
24 settlements, that I think if Your Honor appoints me to the
25 leadership, that if I am in charge of all the time-and-expense

1 records, I am confident at the end of this case, if we seek a
2 fee because we are successful, that Your Honor will have
3 comfort that the fees that were billed in this case were
4 appropriate and necessary for the prosecution and that the
5 class's interests were paramount from day one. And that's what
6 I would commit and I do commit to Your Honor.

7 THE COURT: By the way, now that you've raised that
8 issue, let me tell everyone -- because I really try not to
9 nickel and dime anybody -- I do not accept block billing. And
10 now I've said this, if it becomes necessary for me to make
11 significant reductions at some point in the future because of
12 block billing, you've been warned.

13 MR. DAVIDSON: If the block billing comes in to me,
14 if I'm on the leadership and block billing comes to me, guess
15 where it goes? It goes right back to them. I say, you need to
16 fix this, and fix it ASAP, because we've got to get it for
17 Judge Simon the next day.

18 So, you know, between the *Apple* case and the *AMD*
19 case, Your Honor, I honestly believe that I am well suited, and
20 it would be a tremendous honor to be working alongside any of
21 these lawyers.

22 You know, Your Honor asked -- and to me it is the
23 most important thing -- about working cooperatively with
24 co-counsel and defense counsel. Ask any of these lawyers in
25 this courtroom, and I think what they would say -- at least I

1 hope what they would say is that I'm one of the most honest and
2 kind lawyers that they have ever worked with, but I'm a good
3 advocate, I work very hard for my clients, I make wonderful
4 presentations to the Court, and I am hopefully successful many
5 more times than I'm not.

6 But a couple other things, Your Honor. Your Honor
7 asked about what happens with the *Hyundai-Kia* case. As far as
8 I see it, we don't really have a choice with the way the law is
9 set. If we have to file a consolidated complaint -- and
10 assuming I'm lucky enough to be on the leadership -- we have to
11 cover the entire country or else those people are not going to
12 be, under Ninth Circuit law, adequately represented in this
13 case. So that's unfortunately how it would probably have to
14 play out, because you need representation for each state.

15 THE COURT: What's your view -- I'm not going to do a
16 state-by-state issue, but what's your view on the point we just
17 heard from Mr. Gralewski, that we really need two -- maybe
18 three, but at least two different consolidated master
19 complaints, because the regulated entities just are different,
20 both in terms of when their claims begin, what types of claims
21 they'll be having. What's your response to that?

22 MR. DAVIDSON: So I'm a little bit surprised by that
23 simply because if you read the complaints, they're identical.
24 They just are. They raise the exact same issues. So I do not
25 think that -- I think the overlap greatly outweighs the

1 non-overlap part. So I don't think that you need separate
2 tracks. I do agree that the subclass idea would probably take
3 care of it, but at the end of the day, whatever is the most
4 efficient way, I'm in favor of, if that means two tracks and
5 two master complaints.

6 What I wouldn't present as an option to the Court is
7 that in light of *Hyundai-Kia*, that if we do have to plead legal
8 claims, causes of action for 50 states, one option that has
9 been employed by Judge Koh in several cases in the Northern
10 District of California is to select -- have each side select a
11 few that they litigate through either class certs, summary
12 judgment or whatever. I do believe that would be helpful.

13 THE COURT: By the way, since I said it about Judge
14 Davila, I definitely say about Judge Koh. I have tremendous
15 respect for her as well.

16 MR. DAVIDSON: I worked with her in the *Yahoo* case
17 and now in the *AMD* case. What I appreciate the most about
18 Judge Koh is the efficiency in which she works her cases. We
19 are there, we work very hard, very fast.

20 And I do also appreciate -- and I'm not sure if this
21 is something Your Honor does in the *Premiera* case, but what I
22 appreciated most in the MDLs that I've been on the leadership
23 of is routine status conferences.

24 THE COURT: In *Premiera* we have monthly telephone
25 calls, and we're going to do that in this case, too.

1 MR. DAVIDSON: To me I think it just keeps everybody
2 on their toes.

3 The only other thing I would like to talk about, if
4 Your Honor is interested, is the differences in the case
5 management orders that were presented by Intel. Honestly, I
6 believe that with the leadership we can try --

7 THE COURT: The answer is not now. What my plan is
8 is to appoint leadership today and then to give leadership an
9 opportunity to confer with each other, to confer with
10 defendant, and then probably within a few weeks -- I'm not
11 going to make everybody go to the expense of getting back out
12 here -- maybe have a telephone conference to talk about a case
13 management order and schedule.

14 MR. DAVIDSON: I appreciate that, Your Honor.

15 And with that, unless the Court has any other
16 questions, I do appreciate your time. Thank you very much.

17 THE COURT: Thank you.

18 So before we take our lunch break -- and I'd like to
19 keep it brief, so I'll ask our court reporter how much time do
20 you need.

21 (A discussion is held off the record.)

22 THE COURT: Let me just take a minute of your time,
23 we'll start when we finish with this, but I do want to get a
24 sense of who else wants to speak. Let me just go through the
25 list and ask you, just yes or no, do you want to speak.

1 I think that in that situation, Mr. Graifman's point
2 that they've put together a complaint with plaintiffs from
3 30-some-odd states, that this is not a case where it's hard to
4 find a plaintiff. You can fall down outside the hallway and
5 probably you'll get at least one. So any court-appointed
6 counsel will ultimately put together a 50-state complaint.

7 THE COURT: In almost every voir dire that we do
8 here, I ask the jury, "Who here has access to get on the
9 Internet?" And in probably about 40 trials over the last seven
10 years, I have not had a person yet who did not raise their
11 hand.

12 MR. LEVITT: I understand, Your Honor.

13 So everything else that I have to say about myself is
14 in my papers or my mom can tell you, but for all those reasons,
15 I think, Your Honor, I think I'm most suited to be one of the
16 co-lead counsel in this case, and I'd like to be -- hope that I
17 can actually do that.

18 THE COURT: Thank you very much -- is it Levitt?

19 MR. LEVITT: Yes.

20 THE COURT: Mr. Levitt, thank you very much, sir.

21 Jennifer Joost.

22 MS. JOOST: Good afternoon, Your Honor. Jennifer
23 Joost from Kessler Topaz Meltzer & Check.

24 So just really quickly in terms of my firm, almost
25 100 lawyers, two offices, Pennsylvania, San Francisco, and I

1 happen to be in our San Francisco office.

2 We have the resources to litigate this case. We do
3 not rely on third-party funding. And you can see our firm
4 successes in the resume and in the brief that we filed with the
5 Stoll Berne group.

6 So with respect to myself in particular, my entire
7 career thus far as been devoted to complex class action
8 litigation, and there are two things that I think are very
9 specific, and I haven't heard yet, at least in this
10 combination. One, I am -- have been appointed by Judge Koh in
11 the *AMD* case.

12 THE COURT: I saw that.

13 MR. JOOST: With my firm, but also along with Robbins
14 Geller. We filed a complaint, a consolidated complaint.

15 THE COURT: I remember seeing that.

16 MR. JOOST: You know, we had to give a lot of thought
17 to all of these issues that are going to come up, at least with
18 respect to Spectre, and one thing I did want to note is that
19 both Spectre and Meltdown are hardware issues.

20 THE COURT: I thought Spectre was primarily a
21 software issue.

22 MR. JOOST: It's not. The issue is CPU architecture,
23 and both Intel and AMD utilize various optimization techniques
24 in order to get things to go faster. You have speculative
25 execution and branch prediction, which are exploited when you

1 use Spectre, and then there is when you check the permissions,
2 and that's the Meltdown issue. But it's in the CU
3 architecture, which is considered the hardware.

4 And, quite frankly, they were not concerned, experts
5 were not -- the companies, I should say, were not concerned
6 with security, they were looking more at the performance of
7 their chip.

8 THE COURT: I mentioned that one of the things that I
9 will be expecting from both plaintiffs' steering committee and
10 from defendants at some point at the appropriate time, but
11 probably before I even have to deal with Rule 12 motions, is a
12 neutral tutorial on this technology. I understand a fraction
13 of it at a 40,000-foot level, and that's about it, and I really
14 need to understand it more.

15 MR. JOOST: I think that's great, Your Honor. I
16 think it's really important not just for yourself but also for
17 the litigators. We all need to be on the same page and using
18 the same terminology where necessary in a neutral manner.
19 Obviously at some point we will be adversaries and utilizing
20 that information to litigate this case, but I think it's
21 important to have a foundation to work from.

22 THE COURT: You know, whether we deal with this at
23 summary judgment or at trial, there will probably be a fairly
24 small handful of issues, a handful of issues that the parties
25 will disagree about, and they'll probably disagree about it

1 vigorously, and we'll see if there's a genuine issue of fact
2 and we'll see how that pans out. But my expectation is that
3 there will only be a handful of issues, and we all need to be
4 on the same page with respect to everything else.

5 MR. JOOST: I think that's right, Your Honor. In
6 particular, we've been talking a lot about Spectre and Meltdown
7 and when those exploits were identified to the companies here,
8 but I think it's very important to remember that there was
9 academic research talking about this exact security
10 vulnerability going back to the first decade of this
11 millennium. So this isn't a new issue for these companies -- I
12 mean, they'll obviously argue, but just as the old Spectre and
13 Meltdown were identified in June of 2017, that's the way to
14 exploit the vulnerability that existed long before that.

15 The other, and related --

16 THE COURT: I also wonder, too, whether or not there
17 was the technological ability to exploit that vulnerability
18 long ago. Because as I understand it, it takes some pretty
19 sophisticated technology to exploit this vulnerability. Am I
20 wrong?

21 MS. JOOST: Well, I think with respect to the
22 specific ways to put into place the side-channel attack, that
23 is true. The side-channel attack, particularly the cache
24 timing side-channel attack which is utilized in both Spectre
25 and Meltdown has been, as before, at least in university

1 research with respect to hardware security for a while. So,
2 again, we'll get through all of this.

3 The other piece of this is I actually have a
4 securities fraud class action right now against Qualcomm, and
5 it relates to the microprocessor for a mobile device that would
6 cause the device to overheat and throttle. And so just some of
7 the same benchmarks we might be using here in order to evaluate
8 the performance speeds of these devices, we've already been
9 looking at in that case.

10 But one thing I haven't really heard much of today --
11 I've heard the acronym ESI used, but I have not heard really
12 much about it, and that's one of the things that I absolutely
13 bring to the table is an expertise in ESI, to understand that
14 when defendants make objections in written requests, if those
15 objections, given the amount of data we have, start getting
16 implemented at the beginning, with the sources that are chosen,
17 how those sources are culled, then how are they searched in a
18 manual review, and making sure that we are on top of that and
19 we understand what's going on, and also how to say, to the
20 extent that we can, in that process --

21 THE COURT: What's your been your experience with TAR
22 or predictive coding?

23 MS. JOOST: I will say I'm probably the first person
24 to utter the word at a technology review in a partners' meeting
25 at my law firm. That is my role at my firm, and we are looking

1 very closely at various different forms of AI in order to
2 better streamline our process, in terms of viewing documents
3 and getting faster to those that matter for the case, but also
4 in trying to work with defense counsel to utilize those in
5 order to cut down on their costs at the front end, and also get
6 the best documents quicker. There's studies that show if you
7 utilize search terms that you get 20 percent of the relevant
8 documents, but if you use TAR or other types of AI, you could
9 get upwards of 50 percent of the relevant documents.

10 THE COURT: On the order of that, I do encourage
11 that. I also frankly encourage both sides to share their
12 entire -- their entire strategy in doing the predictive coding
13 analysis with each other when you work on something. We'll
14 talk more about that later with the leadership and with
15 defendant.

16 I'll also tell you, too, one of my practices when
17 there's ESI disputes, more often than not I will direct the
18 parties if they can't work it out to schedule a time and we'll
19 have an evidentiary hearing in here where I'm going to be
20 hearing more than just from the lawyers. I want to hear from
21 IT people, and depending on the size of the case, the CIOs in
22 some cases, but otherwise knowledgeable IT folks. If the
23 plaintiffs have an IT expert, I'll bring them in because I want
24 to try to find out the most efficient, fair, and cost-effective
25 way to get whoever's seeking the information the information

1 that they're entitled to see without breaking the bank or
2 unreasonably wielding this as a sword over someone who has to
3 respond to the information.

4 And sometimes the lawyers get it and can explain it
5 to me, but more often than not, when they can't work it out
6 themselves, I will ask for an evidentiary hearing with the IT
7 folks, either in-house or third party, and that oftentimes
8 solves the problem.

9 MS. JOOST: I completely agree that if you have the
10 right people in the room speaking the right language, you can
11 get it done.

12 And I will say that as much as I do consider myself,
13 at least from a legal perspective, somewhat of an expert in
14 terms of ESI, I always encourage my partners to not only bring
15 in the vendor in early, or if you're doing it in-house, to get
16 one of those IT experts in early and consult with them. And I
17 still consult with them. I put all my protocols to my vendor,
18 make sure that we're all on the same page.

19 THE COURT: I encourage the lawyers on both sides of
20 the case to bring their IT vendors or consultants or experts to
21 come together in the same room. The lawyers can explain
22 generally what information is being requested, and then let the
23 IT experts talk to each other about the most efficient and fair
24 and inexpensive or reasonably expensive way to get that
25 information.

1 MS. JOOST: Music to my ears, Your Honor.

2 I guess the last thing I'll just focus on is
3 diversity. We talked about geographical diversity, but I think
4 it's also important just in terms of other types of diversity.
5 Obviously, I'm the second woman to speak today. I'm also on
6 the younger side. I think it's important to bring up attorneys
7 and make sure they get the experience.

8 I've already critically run complex discovery in
9 class actions in 10 to 15 different matters. But, you know, my
10 name is not on the door. I'm starting to get gray hair, but
11 it's not quite there yet. But I think it's important to make
12 sure that the next group of people is given the opportunity to
13 take on these important roles and get the experience so that at
14 some point in time we can be the lead counsel in a case like
15 this.

16 And unless Your Honor has any other questions, that's
17 all I have.

18 THE COURT: Very good. Thank you, Ms. Joost.

19 MR. JOOST: Thank you very much.

20 THE COURT: Cara Laufenberg.

21 MS. LAUFENBERG: Good afternoon, Your Honor. I'm
22 Cara Laufenberg from Keller Rohrbach in Seattle, Washington.
23 So I'm representing multiple minorities here today from the
24 Pacific Northwest bar.

25 I'm actually here today on behalf of Gretchen Cappio,

1 who is my partner at Keller Rohrback and is proposed for the
2 plaintiffs' steering committee as part of the Stoll Berne
3 group. She's profusely apologetic she could not be here today.
4 She was called away on an unexpected and unavoidable
5 professional engagement.

6 But I can speak with a lot of knowledge to
7 Ms Cappio's years of dedication and experience. We've
8 practiced law together for over 15 years now. We are both a
9 part of Keller Rohrback's complex litigation group, and we've
10 spent almost all of our careers protecting and fighting for
11 consumers' rights. So this is much of what we do at our firm,
12 and we have done it in a lot of big cases like this, in a lot
13 of MDL cases, and we've worked with almost all of the firms
14 that are here today. So we have a track record of working well
15 with others on both sides.

16 I would add that we are involved in appointed and
17 leadership positions in many of the cutting-edge nationwide
18 litigation, many of them MDLs that are going on today. To name
19 a few, the *Volkswagen "Clean Diesel"* case, which Ms. Cappio was
20 an integral part of our leadership effort; likewise the *Jabbari*
21 *v. Wells Fargo* case, which is the fraudulent account case that
22 was just -- the settlement was just approved by Judge Chhabria
23 in the District of California a day ago, and that is a case
24 that was dismissed on arbitration issues, and we brought it
25 back and were able to settle it. So that's a great result for

1 the class there.

2 Ms. Cappio is also involved in the *EpiPen* MDL that's
3 currently pending in Kansas; likewise, the *Chrysler EcoDiesel*
4 case in the Northern District of California; and the *National*
5 *Prescription Opiate* case that's ongoing in Ohio. And all of
6 these are extremely complex and technical cases, much like what
7 this case will be.

8 And I would also stress that we have a lot of
9 technical expertise because of our data breach experience. We
10 have leadership positions in the *Sony* case that was litigated
11 down in the Central District of California, the settlement of
12 *21st Century Oncology* in Florida, and also *VTech* and *Experian*.

13 We use no third-party financing.

14 I'll try to keep short addressing the other issues
15 that you've raised because I know everyone has been here for
16 some time.

17 I think we're open to representation of different
18 plaintiff groups. I think the more I hear today, the more it
19 makes a lot of sense. The only thing that I would implore Your
20 Honor to consider is whether it makes sense to allow the
21 leadership attorneys, once appointed, to confer amongst each
22 other and come up with a management for that issue to propose
23 to Your Honor, and may need to confer with opposing counsel as
24 well. I think that that may make more sense than making it a
25 part of the leadership decision.

1 In terms of our involvement in other -- the other
2 sort of potentially related cases that you raised, one of my
3 partners is actually on the fairly large *Apple* committee that
4 has been discussed today, and so we will be able to glean some
5 efficiencies from that. And we've worked very closely with
6 Mr. Davidson and Ms. Joost on the *AMD* case. And so we are
7 familiar with vetting, and know that case really well.

8 As to the staged discovery issue, I think again what
9 you've raised made a lot of sense, and I just implore that we
10 have the opportunity to confer about that and make some
11 decisions as a leadership group, and confer with opposing
12 counsel, because I think we'll be able to reach a decision and
13 an agreement which we can then present to Your Honor.

14 Thank you very much. I'm happy to answer any
15 questions.

16 THE COURT: Thank you. Not at this time. Thank you,
17 Ms. Laufenberg.

18 Brian Gudmundson.

19 MR. GUDMUNDSON: Good afternoon, Your Honor. I'll be
20 brief in my remarks, since I know that everybody has been here
21 for some time and very respectfully listened to everyone's
22 presentations.

23 It was a great honor being asked by Mr. Davidson to
24 join the Stoll Berne group as a member of the plaintiffs'
25 steering committee, and what I do most of my legal career is I

1 represent financial institutions in U.S. security cases. And
2 here I represent the ANECA Federal Credit Union in Shreveport,
3 Louisiana.

4 Our firm was lead counsel in the *Target* case, where
5 we did establish two tracks, I think for one of the first times
6 in the data breach cases. I have something to say about
7 tracks.

8 I'm on the plaintiffs' steering committee for the
9 *Home Depot Data Breach* case on the financial institution
10 side -- these are all financial institution cases. I'm co-lead
11 counsel for the *Arby's Data Breach* case; PSC in the *Wendy's*
12 *Data Breach* case; PSC in the *Chipotle Data Breach* case. I'm
13 also on the PSC of the *Vizio* case down in Southern California,
14 which is not a data breach case but involves the impermissible
15 sharing of -- of personal information on behalf of consumers.
16 My partner Chris Ridout is on the *Apple* steering committee.

17 What all that really means, I think, is that I -- my
18 job really every day, expressed in front of Judge Totenberg in
19 Atlanta, is explaining in simple terms what this is all about,
20 how these technological things come about and why they happen
21 and why they happen in certain ways. I think I do have a good
22 handle on the area of the law that applies to these areas.

23 I also have a good handle on working with the experts
24 that are needed to explain it both to me and to the Court, both
25 from a technological perspective and from a damages

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature or conformed signature is not certified.

/s/Bonita J. Shumway

June 22, 2018

BONITA J. SHUMWAY, CSR, RMR, CRR
Official Court Reporter

DATE